

1 **LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**
2 **ODAWA GAMING ENTERPRISE MANAGEMENT, INC. CORPORATE CHARTER**
3

4 This Corporation is hereby organized, incorporated and granted its corporate powers,
5 privileges and immunities under the laws of the Little Traverse Bay Bands of Odawa Indians,
6 (Tribe) as a Tribally chartered corporation for the purposes set forth in Article II. The Little
7 Traverse Bay Bands of Odawa Tribal Council grants this corporate charter pursuant to its
8 inherent sovereign authority through enactment of Odawa Gaming Enterprise Management,
9 Statute, WOS _____ and pursuant to Part Two of Comprehensive Business Codes
10 of the Little Traverse Bay Bands of Odawa Indians, WOTC 12.114, *et seq.* This Charter creates a
11 Tribal Corporation as defined at WOTC 12.116(B) as a corporation wholly owned by the Little
12 Traverse Bay Bands of Odawa Indians for the benefit of the Tribe and its members, and its
13 ownership is inalienable.
14

15 **ARTICLE I: NAME and PRINCIPAL PLACE OF BUSINESS**
16

17 By this Charter, the Tribe creates the Odawa Gaming Enterprise Management, Inc. (the
18 Corporation). The Corporation shall have its principal place of business at the Odawa Casino
19 Resort, 1760 Lears Road, Petoskey, Michigan, or at such other location within the Tribe's
20 territories that the Board of Directors of the Corporation shall determine.

21 **ARTICLE II: OWNERSHIP**

22 The Corporation shall be 100% owned and controlled by the Little Traverse Bay Bands
23 of Odawa Indians, (Tribe).
24

25 **ARTICLE III: PURPOSES**
26

27 The Corporation is organized for the purpose of developing, constructing, owning,
28 leasing, operating, managing, maintaining, promoting and financing Gaming Commercial
29 Enterprises and engaging in any other lawful activity, subject to any limitations imposed by the

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1 Odawa Gaming Enterprise Management Statute, any contract, indenture or other instrument by
2 which the Corporation is bound. The Tribe intends that the Corporation shall assume all
3 obligations, responsibilities and duties of the Tribe under gaming law existing at the date of
4 enactment of this Charter, with the sole exception of the power of gaming regulation, gaming
5 licensing and enforcement of applicable law, which powers are reserved to the Tribe.
6

7 **ARTICLE IV: DEFINITIONS**

8

9 For purposes of this Charter the following terms shall have the meanings respectively specified:

10 “Board of Directors” shall mean the Board of Directors of the Corporation.
11

- 12 a. “Compact” shall mean the “Tribal-State Gaming Compact between The Little
13 Traverse Bay Bands of Odawa Indians and the State of Michigan.
14
- 15 b. “Corporation” shall mean the Odawa Gaming Enterprise Management, Inc.
16
- 17 c. “Executive” means the Executive branch of the Little Traverse Bay Bands of Odawa
18 Indians.
19
- 20 d. “Felony” shall mean only those offenses set forth under Tribal Statute or the United
21 States Indian Major Crimes Act (18 U.S.C. § 1153).
22
- 23 e. “*Gaming Commercial Enterprises*” means the Odawa Casino Resort and ancillary
24 enterprises and activities, any existing and future establishment of the Tribe (i) upon
25 which Gaming takes place, (ii) which is authorized and licensed under applicable law,
26 and (iii) which the Council designates for ownership, lease, development,
27 construction, operation or management by the Company, including without limitation
28 any Class III Gaming facilities established in accordance with the Compact including
29 the Odawa Casino Resort and ancillary enterprises and activities and other tribally
30 owned enterprises or businesses.
31
- 32 f. “*Gaming Regulatory Commission*” means the Little Traverse Bay Bands of Odawa
33 Indians Gaming Regulatory Commission established pursuant to Waganakising
34 Odawak Statute 2005-06, May 15, 2005.

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- 1
- 2 g. *“Indian Gaming Regulatory Act”* means 25 U.S.C. §§ 2701-2721.
- 3
- 4 h. *“Obligations”* shall mean any notes, bonds, interim certificates, debentures or other
- 5 evidences of indebtedness issued by the Corporation under this Charter.
- 6
- 7 i. *“Obligee”* shall mean any holder of an Obligation, and any agent or trustee for any
- 8 holder of any Obligation.
- 9
- 10 j. *“Odawa Casino Resort”* means the gaming enterprise, including related hotel and
- 11 restaurant services, of the Tribe located in Petoskey, Michigan, wherein the Tribe
- 12 operates Class II and Class III gaming to generate governmental revenue for the Tribe
- 13 pursuant to the Indian Gaming Regulatory Act.
- 14
- 15 k. *“Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”* means
- 16 l. *“areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the*
- 17 *boundaries of the reservations for the Little Traverse Bay Bands as set out in Article*
- 18 *I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.”* Little Traverse
- 19 Bay Bands Constitution, Article V(A)(1)(a).
- 20
- 21 m. *“Tribe”* or *“LTBB”* means the Little Traverse Bay Bands of Odawa Indians.
- 22
- 23 n. *“Tribal Constitution”* means the Little Traverse Bay Bands of Odawa Indians
- 24 Constitution as adopted by its membership on February 2, 2005.
- 25
- 26 o. *“Tribal Council”* means the elected body of nine Tribal members of Little Traverse
- 27 Bay Bands of Odawa Indians with duties found in the Tribal Constitution Article VII.
- 28

29 **ARTICLE V: RELATION TO TRIBE**

30

31 The Corporation shall constitute a governmental instrumentality of the Tribe, having

32 autonomous existence separate and distinct from the Tribe.

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a. For purposes of civil jurisdiction, regulatory jurisdiction and taxation, the Corporation shall be deemed a subordinate arm of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

b. The Corporation shall have no power to exercise any regulatory or legislative power; the Tribe reserves from the Corporation all regulatory, legislative and other governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating Gaming on the territories of the Tribe.

ARTICLE VI: ASSETS

The Corporation shall have only those assets of the Tribe formally assigned or leased to it by the Tribal Council, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Corporation, or any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Tribe or another Tribal Entity not assigned or leased in writing to the Corporation.

ARTICLE VII: BOARD OF DIRECTORS

The management of the affairs of the Corporation shall be vested in a Board of Directors, except as otherwise provided in this Charter or in the bylaws of the Corporation. The Board of Directors shall be comprised of at least three (3) and no more than five (5) members appointed by a majority vote of the Tribal Council. ~~The Tribal Council sets the following minimal requirements for appointment: and shall serve a three (3) year term staggered as follows:~~

<u>Name</u>	<u>Address</u>	<u>Term</u>
<u>a. Carol McFall</u>		<u>Term expires 2011</u>
<u>b. Sheran Patton</u>		<u>Term expires 2012</u>
<u>c. Judy Pierzynowski</u>		<u>Term expires 2013</u>
<u>d.</u>		

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2 3 4 5 **ARTICLE VIII: MEETINGS** 6

7 **A.** The board shall hold a meeting or work-session at least once a month.

8
9 **B.** The board shall develop meeting and work-session policies and procedures.
10

11 **C.** Board meetings shall be open to Tribal Citizens. Closed session may be held only for the
12 purposes of personnel, litigation, confidential business or legal matters, or other matters that raise
13 significant privacy or confidentiality concerns.
14

15 **D.** Notice of meetings or work-session shall be posted forty-eight (48) hours in advance.
16

17 **E.** Board business that requires immediate attention may be conducted by a telephone
18 conference call. Any action taken on such call shall be recorded in the minutes of the next
19 regularly scheduled meeting. The board Secretary or designee shall attempt to notify each of the
20 board members of the conference call by any practical means including telephone, fax, e-mail or
21 in person and must certify that an attempt was made to contact each board member. No
22 compensation will be paid for telephone conference calls.
23

24 **F.** Emergency meetings may only be called when immediate action is necessary for the
25 preservation or promotion of essential interests of the Tribe or the Enterprises. The emergency
26 action taken must be ratified at the next regular meeting of the board, and the minutes must state
27 the reason such emergency action was necessary.
28

29 **G.** A quorum for a board meeting shall consist of a majority of the sitting board members. A
30 meeting may not be called to order without a quorum present and no official business shall be
31 conducted without a quorum.
32

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1 **H.** A work-session does not require a quorum. No official action shall be taken at a work-
2 session. Work-session shall remain open and shall not include a closed session.
3

4 |
5 **ARTICLE IX: CORPORATE POWERS**
6

7 The Corporation shall have the power to:

- 8
9 a. To purchase, receive, solicit, take by gift, devise, or bequest, or otherwise acquire,
10 own, hold, improve, use, and otherwise deal in personal property of every
11 description, or any interest therein, wherever situated.
12
13 b. To lease real property and improvements from the Little Traverse Bay Bands of
14 Odawa Indians, with prior approval of the Tribal Council.
15
16 c. To make contracts or agreements, incur liabilities and borrow money from any
17 source, upon such terms and rates and interests as the Corporation may determine;
18 to issue notes, bonds and other obligations and secure any of its obligations by
19 specifically mortgaging, pledging or assigning its corporate property or income as
20 collateral for its corporate debts or liabilities, with prior approval of the Tribal
21 Council.
22
23 d. To lend or invest money for its corporate purposes.
24
25 e. To conduct its affairs, carry on its operations, and exercise the powers granted
26 under this Corporate Charter in any state, territory, district, or possession of the
27 United States or in any foreign country.
28
29 f. To elect or appoint officers and agents of the Corporation and define their duties
30 and fix their compensation.
31
32 g. To sue and be sued but only in accordance with Article XI of this Charter.
33
34 h. To have and exercise all powers incidental, necessary or convenient to the

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conduct of corporate business, not inconsistent with applicable law, and to engage in any and all activities which will directly or indirectly carry out the purposes of the Corporation as set forth in Article III.

ARTICLE X: SCOPE OF ACTIVITIES

A. The Odawa Gaming Enterprise Management, Inc. is authorized to conduct the following enterprise activities:

1. Gaming activities authorized under the Tribal-State Gaming Compact.
2. Hotel and recreational vehicle activities.
3. Entertainment and conference activities.
4. Dining and banquet activities.
5. Activities reasonably related to the above.

6. Other activities as may be authorized from time to time by Tribal Council.
~~amendments to this Statute.~~

ARTICLE XI: SOVEREIGN IMMUNITY

a. The Corporation is a distinct legal entity from the Little Traverse Bay Bands of Odawa Indians with its own assets. While the Tribe is the sole owner, the Corporation's corporate activities, transactions, obligations, liabilities and property are not those of the Tribe. Nothing in this charter waives or permits the Corporation to waive the Tribe's sovereign immunity from suit.

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- 1
- 2 b. The Corporation may effectuate limited waivers of its sovereign immunity for
- 3 conducting day-to-day business if the waivers are made in accordance with either
- 4 of the following methods:
- 5
- 6 1. Tribal Council may expressly authorize a limited waiver of sovereign
- 7 immunity on a case-by-case basis through a specific resolution.
- 8
- 9 2. The Corporation may waive its sovereign immunity pursuant to
- 10 transactions or agreements that the Corporation may execute in the course
- 11 of its ordinary business affairs.
- 12
- 13 3. Any waivers of sovereign immunity made pursuant to (1) or (2) above
- 14 shall only expose the assets owned or held by the Corporation and shall
- 15 not subject other Tribal assets to liability. Waivers of sovereign immunity
- 16 are disfavored and shall be granted only when necessary to secure a
- 17 substantial advantage or benefit to the Corporation. Waivers of sovereign
- 18 immunity shall not be general but shall be specific and limited as to
- 19 duration, grantee, transaction, property or funds, if any, of the Corporation
- 20 subject thereto. Neither the power to sue and be sued provided in this
- 21 Charter, nor any express waiver of sovereign immunity by resolution of
- 22 the Corporation's Board of Directors or the Tribal Council shall be deemed
- 23 a consent to the levy of any judgment, lien or attachment upon any
- 24 property of the Corporation other than property specifically pledged or
- 25 assigned, or any property of the Tribe, or a consent to suit with respect to
- 26 any land within the exterior boundaries of the Reservation or consent to
- 27 the attachment or encumbrance of any such land.
- 28
- 29 c. Sovereign Immunity of the Tribe. All inherent sovereign rights of the Tribe as a
- 30 federally recognized Indian tribe with respect to the existence of the Corporation
- 31 are hereby expressly reserved, including sovereign immunity from suit in any
- 32 state, federal or tribal court. Nothing in this Charter shall be deemed or construed
- 33 to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of
- 34 the Tribe to the jurisdiction of the United States or of any state with regard to the

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business affairs of the Corporation or the Tribe or any cause of action, case or controversy.

ARTICLE XII: MANAGEMENT OF CORPORATION

The Board of Directors is empowered and directed to adopt bylaws consistent with this Charter and all applicable law to set out management of the Corporation and its activities.

ARTICLE XIII: ATTORNEYS

The Corporation may utilize services of an attorney or attorney(s) as provided for by the Odawa Gaming Enterprise Management, Statute, or such other attorneys as approved by Tribal Council.

ARTICLE XIV: INSULATION FROM SHIFTS IN TRIBAL POLITICS

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(a) Member(s) of the Board of Directors appointed under Article VII serve 3 year terms and there shall be no limitation on the amount of terms that may be served. . However, a Board member can only be involuntarily removed for one or more of the following reasons:

1. The Board member(s) intentionally or negligently took action to harm the interests of the Corporation or Tribe;

2. The Board member(s) is convicted on any crime that could harm the credibility or function of the Corporation;

3. The Board member(s) failed to act in good faith, or with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, or in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) Removal of a Board member(s) for one or more of the reasons set out in subsection (a) above can only be accomplished by an affirmative vote of three-fourths (¾) or

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1 more of the Tribal Council members eligible to vote.

2
3 (c) Any changes to this charter by Tribal Council shall only be adopted upon the
4 affirmative vote of three fourths (¾) or more of those council members eligible to
5 vote.

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9 **ARTICLE XIV: DURATION and DISSOLUTION**

10
11 The Corporation shall continue in perpetuity unless and until dissolved upon adoption of
12 a resolution requiring dissolution by an affirmative vote of three-fourths (¾) or more of the
13 Tribal Council members eligible to vote. No such resolution shall take effect before the
14 expiration of 90 days from the date of adoption. Upon dissolution of this Corporation, its assets
15 shall be distributed at the direction of the Tribal Council, or its designee, as follows:

- 16
17 (a) Any property held upon an express condition requiring its return, transfer or other
18 disposition shall be distributed accordingly;
19
20 (b) Any property or assets required to be distributed or transferred in any manner
21 according to federal law shall be distributed or transferred accordingly;
22
23 (c) Claims of creditors of the Corporation approved by the Tribal Council shall be
24 paid accordingly from the assets or funds of the Corporation; and
25
26 (d) Remaining assets shall be transferred to another Corporation, to the Tribe, or
27 distributed or transferred as the Tribal Council directs.
28

29 30 **ARTICLE XVI: REGISTERED AGENT**

31
32 The Registered Agent of the Corporation is:

33
34 Name: Legislative Office Manager

35 Address: Little Traverse Bay Bands Odawa Indians

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1 7500 Odawa Circle
2 Harbor Springs, MI 49740
3

4 Provided, the Board of Directors may change the Registered Agent by taking official action and
5 notifying Tribal Council and the Department of Commerce of the change.
6
7

8 **ARTICLE XVII: DISTRIBUTIONS TO TRIBAL GOVERNMENT**
9

10 The Board of Directors shall distribute funds in accordance with any bond agreements or
11 other such agreements and shall distribute any additional funds annually with fair and reasonable
12 profits to the Tribal government beyond the amount required to maintain adequate funds in the
13 Corporation for debt service, and maintenance and growth of business operations. The
14 Corporation shall have no power to issue any shares of stocks to declare and pay any dividends.
15
16

17 **ARTICLE XVIII: REPORTING AND AUDIT REQUIREMENTS**
18

19 The Corporation shall provide reports to Tribal Council as required by Odawa Gaming
20 Enterprise Management Statute.
21

22 The Corporation shall obtain an annual financial audit by an independent public
23 accountant, the results of which will be provided to Tribal Council within 120 days of the end of
24 its fiscal year.
25

26 The Corporation shall keep correct and complete books and records of account and shall
27 keep minutes of its meetings. All books and records of the Corporation, except for sensitive
28 proprietary information, may be inspected by any LTBB citizen at the location where the records
29 are normally kept at any reasonable time.
30
31

32 **ARTICLE XIX: POLITICAL ACTIVITY**

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1
2 The Corporation, and its officer, agents and employees when acting on behalf of the
3 Corporation, shall not contribute to or otherwise support or assist any political party or candidate
4 for Tribal or any other public office.
5
6

7 ***Certificate of Adoption***
8

9 As Tribal Secretary and Legislative Leader, we certify that this Charter was formally
10 adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians on

11 _____.

12
13 Date: _____

14
15 Date: _____
16